

Analysis of Rights of Foetus In The Light of Searah Nabviyah: Comparative Study with Positive Law

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Abstract

The article titled: the rights of foetus in Islamic law, aims at explaining the rights of foetus without discussing different theories of the scholars in this regards. It also defines the foetus and gives literal and technical meanings besides different stages of foetus mentioned in the Holy Quran and the Hadith.

The article explains the rights granted to foetus in the lights of serah before birth and these rights are a binding on the concerned people and violation of foetus' s rights is prohibited and it is a cognizable offence.

The article also discusses the attitude of west regarding foetus rights as the western society is totally ignorant about the rights of foetus and their legislation in this regard is contrary and several western laws are causing the violation of foetus's rights. Thus, the champions of human's rights are blind to the rights of foetus which is foundation and beginning of human life and first step for the human race.

It is that has given these rights to mankind for the first time and informed human being about their rights through the first human's rights charter given at the time of the Noble Prophet {blessing of Allah and peace be upon him}. This charter is known as the charter of Madina between the Muslims and the Jews.

The article concludes: mankind cannot be protected unless the sperm of man is protected and foetus is protected in the womb of the mother from abortion because these are the future of humanity.

Key word: The sperm in the back bone of a man and foetus in the womb of a woman are the future of mankind and they both need to be protected.

Child-hood is an important stage of human life. A child has to take the place of his/her parents in future. A society that protects the rights of the children can also protect the rights of mankind. On the other hand, a society which ignores the rights of the children cannot safeguard the rights of mankind. Therefore, it is necessary to highlight the right of foetus in Islamic law in comparison with the western laws which are violating the foetus' rights and it is only due to their wrong perception

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The foetus is the initial stage of human-life and it remains in the womb of mother or in the sperm of father. A society that does not protect the rights of foetus, cannot protect the rights of mankind and it is most

Unfortunate that human-beings should be ignorant about it. In the pre-Islamic age, the Arabs used to kill their newly born girls but the civilized societies of today have adopted such attitude towards foetus without differentiating between male and female. The people in the age of ignorance were killing their females while these civilized societies are murdering both males and females by permitting free mixing of both sexes in educational campuses, hostels, work places, etc., and permitting abortion.

Introduction:

The rights of human-being are the burning issue of the present era. Most of the debates in the modern age are concerning the protection of rights and different charters are announced and laws are formulated for protection of rights.

Similarly, most of the disputes among different countries arise due to violation of human rights. These may relate to their properties or their social rights or personal rights.

Disputes among the people arise when some powerful person usurps the property of a comparatively weak individual in violation of the victim's right. So the rights are the basic issue for this society.

Majority of the cases in the courts are related to the rights and these rights may be related to protection of Divine education, protection of life, protection of family, protection of intellect or protection of wealth.

If rights of mankind are not violated, there will not be any disputes among the people and among different countries and people would be living together peacefully and this purpose of all laws in general and the Islamic law in particular.

Islamic law gives great importance to human rights, particularly the rights of children and also grants several rights to foetus. It is the first

and last divine order enjoining its faithful to protect the rights of foetus as well as the rights of children.

It is surprising that there is neither any charter of U.N.O nor any provision of general law in which the West protects the rights of foetus and children before their birth.

Islamic law commands its followers to protect the rights of foetus and prohibits the violation of foetus rights even when it is in the womb of mother or in the sperm of the father.

Definitions:

The above discussion requires definition of the human rights in the beginning, along with the definition of foetus and the definition of Islamic law. Therefore, the definition of these terms as follows:

a- Definition of ‘right:’

There are two meanings of right {haqq}. 1- Literal meaning and 2- Technical meaning.

1- Literal meaning: Literally, right means; moral or legal authority, ownership, authority, acquired property or proved thing.
2- Technical meaning: There are different definitions of right regarding to different theories of scholars such as objective theory of rights, subjective theory of rights and compound theory of rights. But here only two definitions of right are mentioned and these have been by contemporary Muslim scholar.

a- Dr Fathi al Dareni defined right {Haqq} as:

{هو اختصاص يقرّبه الشرع سلطة على شيء أو اقتضاء أداء من آخر تحقيقاً لمصلحة معينة.¹}

It is specification of anything with other through which Sharia acknowledges the authority to exercise it, to demand other for the payment of anything or to achieve personal benefit from it.²

Illustration:

a- {اختصاص} means specification with a particular person. If there is no specification, it is not called individual right but it is public right or permissibility and permissibility is not the right of any individual

because the government or concerned authority can stop the people at any time from using a thing.

b- {يقرّبه الشرع}. It means: the specification is acknowledged by Islamic law otherwise such specification is null and void like the usurped property in the hand and possession of the usurper.

c- {سلطة على شيء}. It means the concerned person has authority to dispose of this thing by utilizing it, by selling it or by gifting it to someone or by demanding his borrowed property and it covers both rights: haqq Aini [الحق العيني] and haqq Ma'nvi [الحق المعنوي] in Arabic language.

d- {اقتضاء أداء من آخر}. It means the concerned person, on the basis of his right can demand payment from other party. Such as a creditor can demand his debt from debtor as a matter of right and it is called haqq shakhsi [الحق الشخصي] in Arabic language and these three types of rights are property rights.

e- {تحقيقاً لمصلحة معينة}. It means: to achieve the personal or specific benefit and the concerned person can dispose of his thing or demand it from the other for his personal use.

2- Al Shaikh Mustafa Ahmad al Zarqa has defined right {haqq} as; ³ {هو اختصاص يقرّبه الشرع سلطة أو تكليفاً} the right is specification through which Shariah has acknowledged the authority of an individual over any entity, which may be a thing or a person to perform a duty.

Illustration:

This definition is similar to the first one given in part [a] but it is different from first definition in fifth parts of definition mentioned in definition of right made by Dr Fathi while it is not mentioned in the definition of right by Mustafa al Zarqa, and it is to achieve the specific benefit {تحقيقاً لمصلحة معينة}

Preference:

The last definition of right is preferable as against the first one for the following reasons;

a- The second definition is precise, and it is the basic requirement of a definition that it should be to the point and avoid illustration and interpretation.

b- The last words in the definition of Fathi al Darení explain the objective of right, w objectives of a thing are neither a part of that thing nor its definition because objectives are the purposes achieved after obtaining the thing. Therefore the last part of first definition of right is not only unnecessary but also objectionable.

B- Definition Of Foetus {Janin}.

Since this article aims at explaining the rights of foetus, it is appropriate to define foetus {janin} for the clarification of the subject. There are two meanings of janin;

1- Literal Meaning Of Janin {جنين}:

Janin is singular word and its plural is ajjinnah as dalil {دليل} and its plural is adillah {أدلة} and it is jam ul Qillah [جمع القلة] from jamul Mukassar [الجمع المكسر]. This word has another plural which is Ajnan. Janin literally means hidden thing and when foetus is hidden in the womb of the mother, it is called janin because it is hidden from the public eyes and whatever is hidden from the eyes of people is called jinn such as jinni, night which are also hidden and a deceased person buried in the grave is also called janin.⁴

2- Technical Meaning Of Janin:

Many definitions of foetus have been given by Muslim jurists in Islamic jurisprudence and the jurists are divided into two groups in this respect, as under: 1- Malki and Hanbli jurists hold that: The foetus is whatever in the womb of woman whether it is in the shape of } or in the form of clot of blood and embryonic lump علقه { } {Pictured غير مخلقة} or not pictured {مخلقة}, it is pictured {مضغة} means: there is sign of any limb and or not pictured means there is no sign of any organ of body.⁵ This definition is derived from the

Quranic verse given below: **يَا أَيُّهَا النَّاسُ إِن كُنْتُمْ فِي رَيْبٍ مِّنَ الْبَعْثِ فَإِنَّا خَلَقْنَاكُمْ مِّن تَرَابٍ ثُمَّ مِّن نُّطْفَةٍ ثُمَّ مِّن عَلَقَةٍ ثُمَّ مِّن مِّضْغَةٍ مُّخَلَّقَةٍ أَوْغَيْرٍ مِّثْلُهَا لَنُبَيِّنَ لَكُمْ وَنُقِرُّ فِي الْأَرْحَامِ مَا نَشَاء إِلَى أَجَلٍ مُّسَيَّءٍ ثُمَّ نُخْرِجُكُمْ طِفْلًا ثُمَّ لَتَبَلِّغُوهُنَّ أَشَدَّكُمْ.**⁶

O Men! if you are in doubt as to the [truth of] resurrection,[remember that,] verily we have created [every one of] you out of dust, then out of a drop of sperm, then out of a germ-cell, then out of an embryonic lump complete [in itself] and yet incomplete, so that we might make [your origin] clear unto you. And whatever we will [to be born] we cause to rest in the [mothers'] wombs for a term set [by Us] and the we bring you forth as infants and [allow you to live] so that [some of] you might attain to maturity.⁷

2- Hanfi and Shafei jurists on the other hand, hold that: Foetus is pictured clot of blood and embryonic lump in the womb of woman. It means: When sperm is develops and gets the shape of finger or eye or picture of hand then it is considered foetus {janin} but if it is not pictured such as clot of blood having no picture then it is not foetus. Similarly leach is also not foetus and it is not given any rule of foetus {janin} according to this view point.⁸

Difference Between Both Points Of View:

The difference between the two viewpoints is as follows: The first point of view covers leach and clot of blood whether it is pictured or not while the second point of view hold that the foetus is a clot of blood which is pictured and this definition does not cover clot of blood having no picture or leach.

The Process Of Development Of Foetus In The Womb Of Mother:

We will explain that foetus has deficient capacity for acquisition of rights which are protected by Islamic law. The Quran says: { ولقد خلقنا

الإنسان من سلاله من طين ثم جعلناه نطفة في قرار مكين ثم خلقنا النطفة علقه فخلقنا العلقه مضغه فخلقنا المضغه عظاما فكسونا العظام لحما ثم أنشأناه خلقا آخر فتبارك الله أحسن الخالقين.⁹ }

“Now, INDEED, we create man out of essence of clay, and then we cause him to remain as drop of sperm in [the womb’s] firm keeping.

And then we create out of the germ-cell and then we create out of the germ-cell an embryonic lump, and then we cloth the bones with flesh and then we bring [all] this into being as a new creation: hallowed, therefore, is God, the Best of artisans!¹⁰

This verse of Holy Quran portrays how Almighty Allah arranges the development of janin and protects mankind at different initial stages before birth and the duration of these different stages is mentioned in the tradition of Prophet {blessing of Allah and peace be upon him}

The hadith explains the duration of these different phases as follows:

Prophet {blessing of Allah and peace be upon him} said: { خلقه في بطن أمه أربعين يوماً ثم يكون علقة مثل ذلك ثم يكون مضغة مثل ذلك {...} ثم يرسل الملك فينفخ فيه الروح.¹¹

No doubt that creation of any one of you has not remained in the womb of his mother but for forty days, then it becomes leach for forty days then it becomes clot of blood for forty days then an a Engel is sent and he puffs soul in it.

This period is one hundred and twenty days. The above verse of Holy Quran and hadith are evidence of the protection of sperm from destruction in any way because it is first stage of foetus.

C- Definition Of Islamic Law:

Since this article aims at highlighting the rights of foetus in the purview of Islamic law, it is appropriate to define Islamic law at the beginning. Islamic law has been defined by Muslim scholars as the communication of Almighty Allah related to acts of pubescent persons through demands, option or declaration.¹²

Rights Of Foetus {Janin} In Islamic Law:

There are many rights given to children in Islamic law, some of these are for the children before their birth and some are given after their birth until the age of seven years while some rights are available for the children after seven years of age until the age of puberty. This article explains the rights of child before birth when, it is called foetus. The foetus has many rights in Islamic law and these rights are of three types;

- 1- Personal rights, 2- Social rights, 3- Property rights.

1- Personal Rights Of Foetus:

Personal right means the right of life. This right is enjoyed by the foetus as well as whole mankind and no one can usurp the right of life from foetus, not even the parents because the protection of this right is obligatory on each person and its violation is prohibited.

Abortion is unanimously prohibited in Islamic law after one hundred and twenty days age even though the pregnant woman is sick because it is time the soul is transferred into the body of foetus. Ibn Abidin said:

لو كان الجنين حياً ويخشى على حياة الأم من بقاءه فإنه لا يجوز تقطيعه لأن موت الأم موهوم {
به فلا يجوز قتل آدمي لأمر موهوم.¹³

If foetus is alive and there is apprehension about mother's life due to the foetus remaining in her ovary, abortion is still not allowed because the death of mother is only a threat while the life of foetus is definitive and the murder of a person is not allowed because of a presumed.

It means: The definitive is predominant on probable.¹⁴ It is supported by three evidences as follows:

1- Hadith:

A hadith about a Ghamdiyyah woman as narrated below:

ثم جاءته امرأة من غامد من الإزد فقال: يا رسول الله أطهرني فقال ويحك ارجعي {
فاستغفري الله وتوبي إليه فقال أراك تريد أن تردني كما رددت معاذ بن مالك قال: وما ذاك
إنها حبلى من الزنى فقال نعم فقال لها حتى تضعي ما في بطنك قال فكفلها رجل من
الأنصار حتى وضعت قال: فأتى النبي صلى الله عليه وسلم فقال: قد وضعت الغامدية فقال إذا
لأنرجها وندع ولدها صغيرا ليس له من يرضعه فقال رجل من الأنصار فقال إلى رضاعه يا نبي
الله قال: فارجمها.¹⁵

A woman from the tribe of Ghamid came to the Prophet {blessing of Allah and peace be upon him} and said: O Messenger of Allah purify me, Prophet {Blessing of Allah and peace be upon him} said: sorry

for you. Go back and beg from Allah Almighty salvation and repent to Him. She said: I think you want to send me back as you did with Maiz bin Malik. Prophet said; What is with you? Is she pregnant due to adultery? She said yes, The Prophet said: Wait till the delivery of what is in your womb. The narrator said: A person from Ansar had taken her in his care till the delivery. The narrator said: The gurantor came to Prophet {blessing of Almighty Allah and peace be upon him} and said: Ghamadiyyah has delivered a child, Prophet {blessing of Allah and peace be upon him} said: Now we cannot punish her with stone and leave her little child having no one to feed him. A man from Ansar stood up, and said: O Prophet I shall look after for his foster, then Prophet {blessing of Allah and peace be upon him} said: punish her with stone.

This hadith proves the right of foetus in the womb of the mother, and his life is as important as the life of anybody else and it is to be protected. Accordingly, abortion is prohibited in Islamic law after it attains soul, and it is agreed upon among all Muslim jurists.

2- **Hadith:** It is hadith related to the woman of Huazail tribe as follows: { أن امرأتين من هذيل رمت إحداهما الأخرى فطرحتا جنينها قضى فيه رسول الله صلى الله عليه وسلم بغرة عبد أو وليدة.^{16 17}

Two women from the tribe of Bani se of them thrashed the other due to which her foetus dropped. Prophet {blessing of Allah and peace be upon him} decided the payment of Ghurrah as compensation which is seven year old slave boy or girl. It is equal to half of 1/10 of the full compensation {Diyyah} and it is 5% of full compensation which is equal to five camels provided the foetus dropped without cry and any sound otherwise full compensation will be payable by the offender to the legal heirs of foetus.¹⁸

3- **Analogy:** A question may arise that expiation is similar to compensation and when compensation is obligatory, expiation should also be obligatory. This is the view point of Shafei and Hanbli jurists. They hold that compensation is obligatory for the violation of the right of individual whereas expiation is obligatory for the violation of Almighty Allah's right, so it is similar to compensation and when compensation is obligatory, expiation will also be obligatory.

1- However, Hanfi and Malki jurists are of the view that payment of expiation is not obligatory because the hadith has made the payment of compensation obligatory but it did not mention expiation, so it is not obligatory but is recommended and if somebody pays the expiation, it is also valid.

When compensation is to be made to a victim who is only one, the compensation will also be one though the offenders are more than one. However, if there is and when expiation due to the violation of right of Almighty Allah, each one of offenders who violates the divine rights is required to pay expiation separately.

Objection: Hanfi and Malki jurists object to the view point of Shafei and Hanbli jurists that expiation is a form of worship and analogy is not applicable in worship matters as it is analyzed in Usool al Fiqh,¹⁹ so the obligation of expiation cannot be analogy on obligation of compensation.

2- Social Rights Of Foetus:

It implies right of lineage genealogy and it means: Foetus has the law. The Quran says: { right of family, parentage in Islamic

لآبائهم هو أقسط عند الله.²⁰

[As for your adopted children] call them by their [real] fathers' names: this more equitable in the sight of God.²¹

Prophet {blessing of Almighty Allah and peace be upon him} said:

من ادعى إلى غير أبيه وهو يعلم أنه غير أبيه فالجنة عليه حرام.²²

If someone surnamed himself to a person who is not his father and he knows this fact, then heaven is prohibited on him. The right of parent-hood is not given to him without marriage contract concluded between his father and mother and marriage contract is defined that: as conjunction of offer and acceptance resulting in the lawful copulation for gaining legitimate offspring.²³

The Holy Quran says:

{ ومن آياته أن خلق لكم أزواجاً لتسكنوا إليها وجعل بينكم مودةً ورحمةً.²⁴

And among His wonders is this; He creates for you mates out your own kind, so that you might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who think.²⁵

It means in other words; 'It is from His signs that He created your couple for your satisfaction with them and created love and affection between you.'

This verse of Holy Quran explains the benefits of marriage contract. Another verse of Holy Quran says:

والله جعل لكم من أنفسكم أزواجا وجعل لكم من أزواجكم بنين وحفدة.²⁶

And God has given you mates of your own kinds and has given through your mates, children and children's children, and has provided for you sustenance out of good things of life.²⁷

This verse of Holy Quran explains the purpose of marriage contract and establishes the right of lineage attached with the marriage contract otherwise it is cohabitation.

The Prophet {blessing of Allah and peace be upon him} said:

{وعلى الناكح المهر وعلى العاهر الحجر}²⁸

'The male contracting marriage is liable to pay the dower and adulterer is punishable with stones'. It means: intercourse with a woman without marriage is punishable offence.

There is a legal maxim supporting the rule mentioned above:

{الجريمة لا تفيد صاحبها}.

'The offence does not benefit the offender'. The unlawful copulation with woman is sin and major crime in Islamic law and the male committing this offence is not given the benefit of child because the crime does not benefit the criminal.

Fiqh Hanfi Supports This Right Of Foetus More Than Other Schools Of Thought:

The maximum period of pregnancy is disputed among the Muslim jurists while minimum period of pregnancy is agreed upon and it is six months on the basis of the hadith of the Prophet {blessing of Allah and peace be upon him} narrated by Abi al Aswad {may Allah be pleased with him

{ أنه رفع إلى عمر رضي الله عنه أن امرأة ولدت لستة أشهر فهم عمر برجمها فقال له على رضي الله عنه ليس لك ذلك قال تعالى: والوالدات يرضعن حولين كاملين وقال تعالى: وحمله وفصاله ثلاثون شهرا فحولان وستة أشهر ثلاثون شهرا لا رجم عليها فحلى عمر سبيلها.²⁹

A case is submitted to Omar {may Allah be pleased with him} that a woman has given birth to child after six months of marriage and Omar {may Allah be pleased with him} thought it was a case of stoning to death but Ali {may Allah be pleased with him} said; You cannot do that because Almighty Allah said: the mothers should feed two complete years and Almighty Allah also said: the period of pregnancy and feeding is thirty months and two years plus six months are thirty months. Upon this Omar {may Allah be pleased with him} let the woman go. This proves that six months is the minimum period of pregnancy.

Another example: Suppose If a man living in the west marries a woman living in the east through agents and newly married woman is living at such a distance from her husband that it will take at least six months to be with his wife. Now, this married woman has given birth to a child after exact six months of marriage contract. Is this child legitimate or not?

Hanfi jurists hold that this child is legitimate unless the husband refuses the legitimacy of this child. This is only to protect the right of lineage genealogy of child and it is according to Hanfi school of thought³⁰ while majority considers this child as illegitimate.³¹

EVIDENCE: Hanfi jurists base their view point on the hadith: Prophet {blessing of Allah and peace be upon him} said: {الولد للفراش}

The child of the woman is considered from the man having marriage contract with her provided the husband disowns it.

Objection: The majority of jurists have object to this evidence arguing that: mere possibility of the couple sleeping to gather is not sufficient for the legitimacy of child but it should be occurred in fact.

Answer: Hanfi scholars have answered this questionsaying that: a- Intercourse is a hidden matter while marriage contract is a public matter. b- Intercourse is probable matter while marriage contract is

definitive matter watched by eye witnesses and there is legal maxim:

{البظنة تقوم مقام البينة}

The probable matter which is intercourse takes the place of definitive matter which is marriage contract and it is Frash {الولد للفراش} which means: If married woman comes with a child, this is considered the child of her husband.

Objection: There is an objection from Shaikh Ibn Taimiyyah that it is not possible for man to travel so long distance within few seconds, so according to him such child is not legitimate.

Answer: It is answered that: it is possible for a person to travel such long distance within seconds on the basis of miracle {Karamah} and it is supported by Holy Quran as Asif bin Burkhiyyah put the thrown of Bilqees in the front of Suleiman {peace be upon him} before blinking of an eyes though the thrown had been fifteen hundred miles away from Ceria or more than it. The Quran says:

قال يا أيها الملأ أئكم يأتي بي بعرشها قبل أن يأتيوني مسلمين قال عفريت من الجن أنا آتيك به قبل أن تقوم من مقامك وإني عليه لقوي أمين قال الذي عنده علم من الكتاب أنا آتيك به قبل أن يرتد إليك طرفك فلما رآه مستقرا عنده قال هذا من فضل ربي ليبلوني ءأشكر أم أكفر ومن شكر فإنما يشكر لنفسه ومن كفر فإن ربي غني كريم.³²

When Solomon learned that the Quaeen of Sheba was coming, he said; [to this council] O you nobles! which of you can bring me her throne ere she and her followers come unto me in willing surrender to God? Said a bold one of the invisible beings [subject to Solomon] I shall bring it ti thee ere thou rise from thy council-seat – for, behold, I am powerful enough to do it, [and] worthy of trust!’ Answered he who was illuminated revelation; [Nay] as for me I shall bring it to thee ere the twinkling of thy eye ceases! And when he saw it truly before him, he exclaimed: This is [an outcome] of my sustainer’s bounty to test me as to whether I am grateful or ungrateful! However, he who is ungrateful [to God} is but grateful for his own good; and he who is ungrateful [should know that], verily, my sustainer is self-sufficient, most generous in giving!’³³

3- Property Rights Of Foetus:

Islamic law grants property rights to the foetus as follows:

a- Right Of Inheritance:

The foetus in the womb of his/her mother is given the right of inheritance in Islamic law from the very first day, and pregnancy means: Whatever is in the womb of mother though it is male or female. The foetus is entitled to inheritance from parents, grandparents, brothers, and sisters and other relative as a shareholder, residuary and distant kindred. His / her portion of share is decided after he / she is born and it is on the basis of saying of the Holy Prophet {blessing of Allah and peace be upon him}:

a- {إذا استهل البولودورث.³⁴}

When foetus cries at the time of birth he/she inherits. It is narrated by Abu Hurairah {may Allah be pleased with him}.

b- Another hadith narrated by Abdullah bin Jabir {may Allah be pleased with him} says:

قال النبي صلى الله عليه وسلم: الطفل لا يصى عليه ولا يرث ولا يورث حتى يستهل.³⁵

Prophet {blessing of Allah and peace be upon him} said: funeral prayer is not to be performed for child on birth and he does not inherit from anybody nor does any body inherit to him unless he/she cries at the time of birth.

b- **RIGHT OF BEQUEST:** It means: If anybody bequeathed for foetus which is still in the womb of his/her mother, he/she is entitled to bequest in the Islamic law and one third of legacy of legato is given to foetus being a legatee.

c- **Right Of Endowment:** If someone makes an endowment for foetus which is still in the womb of his/her mother, then he/she is entitled to such endowment and such empowerment is valid.

Foetus Rights In Western And American Laws:

There is not a single provision regarding the protection of foetus

rights in the Western and American laws on the contrary, many legislative steps have taken by west which are totally contrary to personal, social and property rights of foetus. Some of these are:

a- Approval Of Homosexual Marriage:

Several western countries have declared homosexual marriage as valid and Germany passed a law in this regard homosexual marriage in July 2017. Now, such laws are in violation of the right of life for the foetus because these cause destruction of sperm and it is prohibited in Islamic law. Quran says:

ومن آياته أن خلق لكم من أنفسكم أزواجا لتسكنوا إليها وجعل بينكم مودة ورحمة إن في ذلك لآيات لقوم يفتكرون³⁶

And among his wonders is this; He creates for you mates out of your own kind, so that you might incline towards them, and he engenders love and tenderness between you: in this, behold, there are message indeed for people who think!³⁷

Quran says:

إذ قال لهم أخوهم لوط ألا تتقون. {...} أتأتون الذكرا من العالمين وتذرون ما خلق لكم ربكم من أزواجكم بل أنتم قوم عادون³⁸

‘When their brother Loot {peace be upon him} said unto them: Will you not be conscious of God? Must you, of all people, [lustfully] approach men, Keeping yourselves aloof from all the [lawful] spouses whom your Sustainer has created for you? Nay, but you are people who transgress all bounds of what is right.³⁹

Quran says: ⁴⁰ {ثم دمرنا الآخرين وأمطرنا عليهم مطرا فساء مطر المنذرين}

And then we utterly destroyed the others. And rained down upon them a rain [of destruction] and dire is such rain upon all who let themselves be warned [to no avail!].⁴¹

b- Sex Free Societies:

The western societies and their laws allow the citizens male and female to sleep to gather with mutual consent and their governments do not interfere in such matters. Such legislation and practice also violates the right of foetus because when unmarried male and female have intercourse and destroy the sperm, they

cause the prevention of foetus life in this world. This is prohibited in Islamic law.

{والله خلقكم من تراب ثم من نطفة ثم جعلكم أزواجاً}⁴²

Almighty Allah created you from mud, then from sperm, then He made your couples.

c- **Freindship Based Society:**

In almost all non-Muslim countries, young girls are allowed to have boyfriends and go with them on dates. This system creates many problems. For instance,

- a- If girl-friend gives birth to a child, the child goes to orphan houses and he/she is deprived of social rights and the right of lineage genealogy or patrimonial care.
- b- The child is also deprived of the shelter of father.
- c- It is also deprived of the love and the company of his/her parents.
- d- This entire system has made the girls totally unabashed although they are shameful by nature.
- e- When friendship of a girl and a boy is disturbed, the two depart and each one of them searches for another friend.
- f- Disturbance of friendship sometime makes one of them to attempt suicide.
- g- Breach of friendship results in psychological problems and in some cases, shakes their confidence in the fellow beings.
- h- When a child reaches the age of puberty in a sex free society, it is possible that he/she may sleep with his mother or with her father and this is a situation worse than of animals.

d- **Living System:**

In most of non-Muslim societies, students or workers of both sexes from different areas or countries are studying together in the same university or working together in the same factory, they are allowed to live together in one hostel or rented houses and their free mixing give rise to numerous social problems as mentioned above.

Such social systems grossly violate the rights of foetus by depriving him/ her of lineage genealogy rights.

Comparision With Islamic System:

These common practices cause the destruction of sperm directly and the destruction of foetus indirectly because these block the way of foetus coming in this world and it is tantamount to kill a foetus before coming to the existence. On the other hand, Islamic law does not allow the conditions mentioned above, and killing a child before or after the birth is strictly prohibited in Islamic law. There are many evidences of the prohibition of killing children as stated below:

- 1- Quran says: ⁴³ { وَإِذَا الْمَوْءُودَةُ سُئِلَتْ بِأَيِّ ذَنْبٍ قُتِلَتْ } . And when girl child was buried alive is made to ask for what crime she had been slain.⁴⁴
- 2- Another verse of Holy Quran says:
⁴⁵ { وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا }
{ وَلَا تَقْرَبُوا الزَّوْجَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا }.

Hence do not kill your children for fear of poverty: it is we who shall provide sustenance for them as well as for you. Verily, killing them is a great sin. And do not commit adultery, for, behold, it is an abomination and evil way.⁴⁶

Do not kill your children due to fear of hunger. We give you and them daily food, their murder is big mistake and avoid unlawful sleeping with woman because it is evil and it is bad way.

- 3 Another verse of Holy Quran says: ⁴⁷ { الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلِيَشْهَدَ عِدَا بِهِمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ }.

As for the adulteress and adulterer and adulterer flog each of them with a hundred stripes, let not compassion with them keep you from [carrying out] this law of God: if you [truly] believe in God and the Last Day; and let a group of the believers witness the chastisement.⁴⁸

- 4- There is hadith of the Prophet {blessing of Allah and peace be upon him} narrated by Abdullah bin Masud. He said

قلت يا رسول الله أى الذنب أعظم؟ قال أن تجعل لله ندا وهو خلقك قلت: ثم أى؟ قال أن {تقتل ولدك خشية أن يطعم معك. قلت: ثم أى؟ قال أن تزنى بحليلة.⁴⁹

I asked: O Messenger of Allah: What is big sin? The Prophet said: you make a counter part of Almighty Allah though He created you. Then I asked what is next big? Prophet replied: you kill your child being afraid that he will eat with you. Then I asked what is next? Prophet replied: that, you sleep unlawfully with your neighboring woman.

e- **Sperm Donation Centres:**

- a- Sperm donation centres have been opened in different western countries, and people donate their sperm there. This is sheer violation of the rights of foetus and he/she is deprived of the shelter of father and the foetus after birth, is known only through the mother and not father.

NOTE: The foetus in West is deprived of Personal as well as social rights by the laws formulated by their societies besides the rights of property as he/she is not given the right of inheritance.

WHO DOES VOILATE THE FOETUS'S RIGHTS?

There are many factors causing for the violation of the rights of foetus as below:

1- SOCIAL RIGHT OF FOETUS:

Social right means the right of patrimonial and genealogical.

- a- A person who donates the sperm to any centre, violates the social right of foetus.
- b- The woman who takes this sperm in her ovary violates the social right of foetus.
- c- A government which allows such sperm donation centres violates the social right of foetus.

4- Personal Right Of Foetus:

It is right of life;

a- A society which allows free-sex environment violates the personal right of foetus.

e- A country which permits friend-ship among girls and boys violates the personal right of foetus.

2- When the child born of this sperm attains the age of puberty, it is possible for her/him in a sex free society to have intercourse with donor who may be her father or his mother and it is such a shameless practice rejected even by good race of animals.

5- When such people attain position of authority in their society, they take such decisions causing the destruction of values and peace. Accordingly, in June 2017, an American court approved the order of American president Donald Trump preventing the Muslims of specific Muslim countries from entering the United State though they had visas or immigration of U.S.A. In fact, such people are a serious threat to humanity in this world.

There are horrible examples for their cruelties;

a- Killing innocent Muslims in Syria, Yemen, Afghanistan, Held Kashmir, Palestine and Muslims of Myanmar.

b- Mass destruction of innocent people by bombing on Naga Aki, destruction of Iraqi people on the basis of false report regarding weapons, bombing on Tora Bora in Afghanistan and annihilation of of Libya, etc.

The champions of human rights such as America, West, Israel and India are the champions for the violation of human rights.

.c- The U.S has recently shifted its Embassy in Israel from Tel Aviv, to Bait ul Quds which is disputed territory between Israel and Palestine and Israeli police is killing people of Palestine who are recording their angriness against the decision of American president Donald Trump.

It is preparation for third World War for killing innocent people and their children in the world.

Conclusion:

We may sum up this article as under;

- 1- Malki and Hanbli jurists hold that: whatever is in the ovary of the woman is called foetus while Hanfi and Shafei are of the view that, when the clot of blood is pictured and soul is puffed in it, then it is to be called foetus.
- 2- The soul is puffed in the foetus after one hundred and twenty days and it is agreed upon.
- 3- The foetus has deficient capacity for acquisition of rights in Islamic law while the western laws have no concept of the rights of foetus till now.
- 4- The right of life is given to foetus in Islamic law whereas Geneva Convention and Westerns laws are silent on this issue.
- 5- The abortion and punishment of the mother is not allowed in Islamic law though she has committed an offence punishable with death. The Geneva Convention is silent on this issue as well.
- 6- If foetus drops from the womb of mother by any offence and it cries at that moment, then compensation is unanimously binding on the person responsible for this development and this compensation is equal to five camels and the expiation is also obligatory on that person according to Shafei and Hanbli jurists.
- 7- Social rights are available to foetus in Islamic law and these are the rights of parents while western practices and laws are contrary to it as mentioned above.
- 8- The foetus is afforded the property right by inheritance in Islamic law while it is not given to him/her neither in Geneva Convention nor in Westerns laws.
- 9- The foetus is granted the property right through bequest made for him/her in Islamic law whereas the Geneva Convention and the Westerns laws are silent on it.
- 10- The foetus is given the right of property through endowment made for him/her in Islamic law while Geneva Convention and western laws are ignorant of this.

11- Abortion is legally valid in manmade and positive laws and it is indirectly violation of personal right of foetus and it is right of life.

12- Homo several marriages are legally valid in the western laws while it is indirectly violation of the right of foetus and it is right of life.

13- Sex-free dome based on consent of the parties is legally valid in western societies and laws but it is indirectly violation of foetus's right of life.

14- Sperm donation is justified and permitted in Western societies but it violates social rights of foetus and deprives him /her of father's shelter.

15- Friend-ship of boys and girls is allowed in Western society which violates the social right of the foetus because: when friend-ship is terminated the foetus after birth is entrusted to the orphan house, thus it is deprivation of the shelter of parents.

16- The foetus after birth reaches to orphan house and it deprives him/her of social right and it is patrimonial right, while these rights are ensured to him/her in Islamic law.

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